IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Naju alias Narendra Kumar & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 28/2002
against the order dated 4-12-2001 passed
by the Addl. Sessions Judge, Anoopgarh,
in Criminal Revision No. 61/2001.

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Date of Order: August 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.L. Joshi, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 4-12-2001 passed by the Additional Sessions Judge, Anoopgarh, district Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 61/2001, whereby the revision petition filed by the petitioners against the order dated 3-9-2001 passed by the Judicial Magistrate, Anoopgarh (for short, "the trial Court" hereinafter) in Criminal Case No. 329/2001, was dismissed. By the order dated 3-9-2001, the trial Court took cognizance of the offences under Sections 353, 332, 333/34 IPC against the

present petitioners.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Perused the orders passed by the trial Court as well as the Revisional Court and persued the record of the trial Court.

It is contended by the learned counsel for the petitioners that injured Mohan Lal, who, at the relevant time was the Block Development Officer, made a Parcha-Bayan on 15.9.1990 stating therein that Sahab Ram, the Pradhan of the Area and Gopi Ram, both armed with gun and pistol respectively, Bhagirath armed with a gun and Raja Ram armed with a Gandasi, inflicted injuries to him. On this Parcha-Bayan, the police registered the crime report for the offences under Sections 307, 332, 353, 147, 148, 149 and 382 IPC and Section 3/27 of the Arms Act. During investigation, the injured made a statement under Section 161 of the Code on15-9-1990 and in the said statement, he categorically stated that the injuries were caused to him by Sahab Ram Pradhan, Gopi Ram Sarpanch, Raja Ram Ladha and Bhagirath and one person who was the gun-man of Sahab Ram Pradhan. A supplementary statement of injured Mohan Lal was recorded on 24-11-1990, wherein he alleged that the aforesaid five persons, viz. Sahab Ram, Gopi Ram, Raja Ram Ladha, Bhagirath and the gun-man of Sahab Ram Pradhan caused injuries to him. Again on 30.11.1990, the

supplementary statement of injured Mohan Lal was recorded by the police and in that statement also, injured Mohan Lal named those five persons and categorically stated that these five persons assaulted him.

The police recorded the statements of some other persons, who were neither named in the FIR as the witnesses, nor they were the witnesses of the occurrence and have implicated the present petitioners and on the basis of statement of such other persons, the police submitted negative final report against those five persons, whom injured Mohan Lal named out as the assailants and filed challan against the present petitioners.

The trial Court and the Revisional Court have totally ignored the consistent statements, i.e. as many as five statements of injured Mohan Lal, who categorically stated that the gun-short injury as also the injury by Gandasi were caused to him by the aforesaid five persons named out in the Parcha-Bayan and the subsequent statements made under Section 161 of the Code. For the reasons best known to the police, those five persons have been left out and Challan has not been filed against them; however the Challan has been filed against the present petitioners on the basis of statements of the witnesses who were neither named in the FIR as witnesses, nor they are witnesses of the occurrence. It appears that despite the fact that

injured Mohan Lal named out the aforesaid five persons as the assailants, the trial Court, ignoring these facts, took cognizance against the present petitioner vide order dated 3-9-2001, which was not disturbed by the Revisional Court. In my view, even if injured Mohan Lal comes in the witness box, he would not make statement against the present petitioners because he has specifically given the statement against the aforesaid five persons and he has not shown even the presence of the present petitioners at the place of the occurrence. In the circumstances, the impugned orders passed by the Courts below cannot be sustained and are liable to be set aside.

Consequently, the criminal miscellaneous petition is allowed. The impugned orders dated 3-9-2001 and 4-12-2001 passed by the trial Court and the Revisional Court respectively, are set aside and the criminal proceedings pending against the petitioners in Criminal Case No. 329/2001 before the trial Court are quashed. The stay petition stands disposed of.

(H.R. PANWAR), J.

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